IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 713 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ANTHENY FRANCIS KODERO

Appearance:

MR KC SHAH, APP for Appellant State

MR MUKESH R SHAH for Respondent No. 1

MR RN SHAH for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

and

MR.JUSTICE H.H.MEHTA

Date of decision: 09/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE C.K.BUCH)

1. This appeal is preferred by the appellant-State of Gujarat under sec. 378 of CrPC against the judgment dated 21.5.1988 passed by the learned Special Judge, Panchmahals at Godhara in Special Case No. 6/86 whereby the learned Special Judge acquitted the respondents accused of the offences punishable under sections 5(1)(d) & 5(2) of the Prevention of Corruption Act and also under sec. 161, 165 & 165-A of the IPC.

2(i) In order to appreciate the grievances expressed by the appellant- State of Gujarat in the memo of appeal, we would like to narrate some basic facts of the prosecution case. Undisputedly, respondent no.1 (hereinafter referred to as accused no.1) is the husband of respondent no.2 (hereinafter referred to as accused no.2). At the relevant point of time, accused no.1 was serving as a Medical Officer in Primary Health Centre (hereinafter referred to as PHC for short) at village Limdi of district Panchmahals. Obviously, exh.13 - the complaint lodged by the complainant Rameshbhai Bherabhai Chauhan on 24.6.1985, is the backbone of the prosecution case. It is averred in the complaint that Ramanbhai Bherabhai Chauhan- elder brother of the complainant, was serving as a Cleaner with one Bhanvarlal of Limdi on a truck and he met with an accident and sustained serious injuries. He was admitted in M.Y. Hospital, Indore for treatment as an indoor patient and after long treatment, he was discharged from the hospital. However, Ramanbhai was getting regular treatment for the injuries sustained by him and ultimately he succumbed to the injuries and died and his dead body was taken to PHC for performing post mortem.

(ii) Complainant was eager to get the copy of the post mortem note from PHC and so ten to fifteen days after post mortem was performed, complainant met Medical Officer of PHC viz. Dr. Kodero (Accused No.1) and requested him to give a copy of the post mortem notes whereupon a demand of Rs.150/ was made and complainant was specifically informed that only on payment of Rs.150/, copy of the post mortem notes would be given. It is the say of the complainant that on that day when demand was made, since he was having Rs.70/ with him, he had given said amount to Dr. Kodero and promised him to give the balance of Rs.80/ thereafter. It is further averred that thereafter complainant met Dr. Kodero on 23.6.1985 at his residence and requested to give the copy

of post mortem notes whereupon the complainant was informed to give remaining amount of Rs.80/ on the next day i.e. on 24.6.1985 and take away the copy of the post mortem notes. It is the prosecution case that as the complainant was not willing to pay aforesaid amount of Rs.80/ for obtaining post mortem notes, he lodged a complaint on 24.6.1985 before the ACB Police Station, Panchmahals at Godhara and raid was carried out. P.I. Mr. Ranganekar was heading the raiding party.

(iii) Formal initial panchanama was drawn in the office of ACB at Godhara on 24.6.1985. Muddamal currency notes on which anthracene powder was smeared as narrated in the panchanama and were kept with the complainant. Thereafter raiding party proceeded to village Limdi from Godhara at about 12.15 P.M. in a jeep and reached Limdi at about 1.45 P.M. As the accused no.1 was not available in the hospital, raiding party immediately went to the residence of the doctor which is located in the compound and as per the instructions, complainant and panch witness no.1 Galaji Somaji went to the residence and knocked the door of the residence of the Medical Officer and, the wife- accused no.2 opened the door and complainant was asked to come at about 4.00 P.M. By that time, other members of raiding party had taken their position, but on receipt of instructions from accused no.2 to come again at 4.00 P.M., complainant and panch witness no.1 returned back to PI Mr. Ranganekar and narrated before him what had happened there. A formal panchanama as to what transpired there was drawn at Limdi and by way of abundant caution, it seems that the raiding party left village Limdi and went to Jhalod- a nearby village. Raiding party returned back to village Limdi at about 4.00 P.M. and as Medical Officer again was not available in the hospital and was seen in the verandah of his residence by the complainant and panch witness no.1, they both straightway went to the residence of the Medical Officer and entered his house. It is the prosecution case that after about 40 to 45 minutes, accused no.2 asked panch witness no.1 to leave their house and during that time, accused no.1 was allegedly searching copy of the post-mortem notes from the papers lying in the adjoining room- bed room. It is the say of the prosecution that either in the presence of panch witness no.1 or at the time when panch witness no.1 was about to leave the house of the accused, accused no.1 wrote a chit exh.17 recommending PSI of concerned Police Station to provide copies of Inquest Report and police yadi to the complainant. Thereafter, according to the prosecution, accused no.1 asked the complainant to pay balance amount and complainant was directed to put that

amount on a piece of paper lying on the table. Accused no.2 who was present in the house, took the muddamal currency notes smeared with anthracene powder and put in a tin. Undisputedly, panch witness no.1 has not seen any transecction. Immediately thereafter, complainant came out of the house and gave signal to panch witness no.1 who was standing outside the house of the accused who in turn gave a signal to the raiding party as instructed by PI Mr. Ranganekar while drawing the first part of the panchanama. Thereupon, PI Mr. Ranganekar with his team raided the house of the accused. During the search from the house of the accused, muddamal currency notes viz. 1 Note of Rs.50/, 1 Note of Rs.20/ and 1 Note of Rs.10/ (totalling to Rs.80/) referred to in the first part of the panchanama, were found from a tin from the house of the accused which came to be seized. The tin was also seized. Undisputedly, accused no.1 had not accepted the amount and, therefore, when test of Ultra Violet Lamp was made, on the hands of accused no.1, presence of anthracene power was not found whereas on both the hands of accused no.2, anthracene powder was found. Anthracene powder was also found on the tin and on the paper on which said notes were put by the complainant. However, on other currency notes and one bill which were also there in that very tin, no anthracene powder was found. According to the prosecution, accused no.2 failed to give explanation as to the presence of anthracene powder on her hand. Considering the totality of the evidence collected by the Investigating Officer, I.O. had found that this is a case wherein accused no.1 can also be prosecuted for the aforesaid main offences whereas accused no.2 can be prosecuted for the same offences as aforesaid as she had abetted the offences.

3. On completion of investigation, PI, ACB Investigating Officer was satisfied that both the accused can be chargesheeted and prosecuted for the aforesaid offences and, therefore, I.O. had sent all the relevant papers to the State Government for obtaining sanction to prosecute the accused and on receipt of sanction from the office of the Chief Secretary, State of Gujarat, chargesheeted both the accused for the aforesaid offences and submitted the chargesheet to the court of Ld. Special Judge, Panchmahals at Godhara. Thereafter, ld. Special Judge framed charge against both the accused for the aforesaid offences. Both the accused denied the charges levelled against them and thereafter they came to be tried and at the conclusion of the trial, learned Special Judge, Panchmahals at Godhara, vide impugned Judgment dated 21.5.1988 in Special Case No.6/86, acquitted both the accused of the offences with which

they came to be tried. Being aggrieved by the said judgment acquitting both the accused, the State has preferred present appeal.

4. Learned APP Mr. K.C.Shah has taken us through entire record and proceedings of the appeal and especially through relevant documents including sanction, panchanama of test under Ultraviolet Lamp carried out by the raiding party and depositions of all the three witnesses examined during the trial. He had also referred to relevant portions of the judgment of the trial court and pointed out that the trial court should have convicted the respondents- accused and atleast accused no.1 who has demanded the amount from the complainant and at whose instance remaining amount of Rs.80/ was kept on the piece of paper lying on the table. According to Mr. Shah, learned APP, if the story unfolded by the complainant during his deposition is accepted, then the accused can be convicted and role of accused no.2 in sending panch witness no.1 out of her house and picking up the amount lying on the table and putting the same into a tin, is sufficient even to convict her as an abettor of the crime. It is argued that exh.17- chit written by accused no.1 recommending PSI Mr. Mahida to provide copies of police yadi and inquest report to the complainant was not warranted and a doctor of the hospital was not supposed to write such a chit. Gesture of writing such a chit at the relevant point of time and when amount of Rs.80/ was accepted by the accused, the same strengthens the story of the prosecution and it should have been held by the trial court that this act of accused no.1 is a corroborative piece of evidence and under the circumstances, the version of the complainant ought to have been believed.

5. Merely because complainant is facing trial of some criminal case, that does not amount to a disqualification and he ought not to have been indirectly condemned by the trial court by not believing his version. Nature of the alleged criminal offence is not brought on record and mere allegation of pendency of a criminal case does not go to the moral fibre of the complainant. Of course, Mr. Shah has fairly submitted in response to the queries raised by the court that there are material contradictions in the deposition of the complainant, FIR exh.13 and subsequent statements recorded during the course of investigation and these contradictions are brought on record and are proved by putting specific questions to the I.O. who has recorded those statements. Ld. APP Mr. Shah has also accepted that the version of the complainant is not substantially

corroborated by panch witnesses. Sequence of events narrated by the prosecution in the panchanama drawn for arranging a trap and even sequence of events which have taken place during the raid, though proved by I.O., it is obvious that I.O. himself was not an eye witness of the incident as to the travel of muddamal currency notes from the pocket of the complainant to the accused and hence his say would not carry the prosecution case any further, especially when panch witness no.1 was also not present in the house when currency notes were put on the table in the house of the accused. In a nutshell, submission of ld. APP Mr. Shah is that if the say of the complainant is accepted as it is, even then the accused can be convicted and hence the learned Spl.Judge has erred in acquitting the accused.

6. Learned counsel Mr. R.N.Shah appearing for the respondents-accused has taken us through relevant paragraphs of the judgment delivered by the ld. Special Judge and by hammering the facts discussed by the learned Spl.Judge in paras 14 to 17 of the judgment, has submitted that the findings of the learned Spl.Judge are based on proper appreciation of the facts available on record and the same cannot be said to be unjust, perverse or apparently wrong. Failure on the part of I.O. in finding out post mortem notes in the house of the accused nor was kept ready lying in the hospital on the date of raid, itself goes to the root of the credibility of the case of the prosecution. There is no cogent or convincing evidence as to the demand of Rs.150/ which was allegedly made by accused on 1 or the payment of Rs.70/ on the first visit by the complainant to accused no.1. This part of evidence is based on uncorroborated testimony of the complainant and that too with full of material contradictions. Certain improvements which can be termed as material improvements are also found. It is also argued by ld. counsel Mr. Shah that chit exh.17 was never put to the test under Ultraviolet Lamp otherwise innocence of the accused could have been brought to the light. The fact that the complainant had entered the house of the accused at about 4.00 or 4.15 P.M. and the time taken by him in giving signal as to passing of muddamal currency notes to the accused, is unreasonably long. Entire trap could have been completed within 10 to 15 minutes if really the agreed amount only was to be paid to the Medical Officer and copy of post mortem notes was to be obtained from him by the complainant. In this case, neither the amount was accepted by accused no.1 nor copy of the post mortem notes was readily available at the residence of accused no.1 nor in PHC. There was ample scope for the

complainant to plant the amount as doctor undisputedly was searching the relevant papers in the adjoining room-bed room and that accused no.2 was also there in the house and on some occasions was in the kitchen as stated by the complainant himself. It is not a matter of dispute that panch witness no.1 i.e. P.W.2 Galaji Thakor was there in the house of the accused for 40 to 45 minutes and during that time, no demand was made by any of the accused nor there was any talk as to the earlier transaction accepting Rs.70/ towards illegal gratification, which had taken place as stated by the complainant. Absence of anthracene powder on other currency notes found from the tin and also on the bill and the contradiction as to who had opened the tin which is brought on record and is proved, if considered in light of non-examination of chit exh.17 under Ultraviolet Lamp Test, creates an impression that that part of panchanama and version of even I.O. should not be accepted as gospel truth as the same cannot be said to be a cogent and convincing piece of evidence.

7. We have gone through entire record and proceedings of the case. We have also perused entire judgment passed by the ld. Spl.Judge. It is a settled proposition of law that the Appellate Court while dealing with acquittal appeal, should scrutinise reasons assigned by the trial court while acquitting the accused and verify as to the genuineness of the reasons assigned by the Court. Unless the Appellate Court is satisfied that reasons assigned are unjust or perverse, the same should not be disturbed. It is time and again propounded that even if two views are possible, finding of the trial Court should not be disturbed. According to us, this is not the case wherein otherwise two views are possible. In absence of satisfactory evidence as to the demand of bribe amount, it would not be legal and proper to hold that hidden element of demand should be accepted as the amount was found lying in the house of the accused especially in a tin containing other currency notes and other personal document i.e. bill.

8(i) The Apex Court, in more than one cases has observed and held that when the case of the prosecution is found week so far as the case of demand is concerned, the case qua acceptance of gratification should be viewed with great suspicion. It is further observed that when first part of the case of the prosecution is, if found untrustworthy, mere recovery of the amount from the drawer or any other place in the office or the house, is not sufficient to connect the accused with the crime. Some suspicion in such case goes to the root of the merit

of a bribery case.

(ii) In the case of Ayyasami v/s State of Tamil Nadu, reported in AIR 1992 SC 644, while quashing the conviction based merely on probabilities, the Apex Court has held that where there is no independent evidence as to demand of bribe, accused cannot be convicted. Chemical solution did not implicate the appellant accused. Apex Court, therefore, acquitted the accused. According to us, ratio of this decision squarely applies to the present case as there is no reliable evidence as to the demand of bribe available on record. It is a settled legal position that when the recovery of bribe money is found doubtful, no conviction can be recorded. Demand by the accused for the bribe is an essential ingredient of the offence and when there is no evidence regarding demand of bribe and when there was no recovery of money from the body of the accused person nor the accused was caught while accepting the bribe, conviction of the accused, on a mere suspicion, would not be proper. We agree that the acceptance of the bribe money impliedly proves the demand, and the very acceptance bears upon itself the stamp of illegal gratification on one accepts illegal gratification on motive or reward without there being any nexus between the acceptance and the purpose, demand is implicit in the entire crime. In the case on hand, the fact that neither the amount was accepted by accused no. 1 nor the post-mortem notes were handed over to the complainant in the entire incident, weakens the case of the prosecution. Alleged lifting or taking of muddamal currency notes from the table by accused no.2wife of accused no.1, does not strengthen the case of the prosecution.

(iii) In the case of Ishwarlal v/s State, reported in 1979(2) GLR 296, this Court has observed that mere recovery by itself would not be sufficient to convict the accused. There must be other circumstances which are consistent with the guilt of the accused on record by way of substantive piece of evidence.

9. The learned Spl.Judge has rightly held that the prosecution is obliged to bring home the charge by leading convincing and cogent evidence and in case of demand and acceptance of illegal gratification, the basic ingredients of demand, offer and acceptance have to be proved beyond doubt by the prosecution and the evidence must be such that it should not leave any doubt in the mind of the court so far as these ingredients are concerned. The findings of the learned Spl. Judge are

based on accepted proposition of law in this field of criminal jurisprudence. Suspicion cannot take place of proof. Mere fact that anthracene powder was found on the hands of accused no.2 should not be treated as sufficient evidence for acceptance of bribe amount. Recovery of bribe amount from the drawer or from any other place in number of cases, are not found sufficient by the Courts proving acceptance of amount of bribe. Sequence of events, if closely scrutinised, an impression is created that the complainant himself must have tried to see that the raid arranged on his complaint does not fail. In the case on hand, according to us, there is no sufficient evidence to connect the accused with the crime and hence we are not inclined to accept the appeal preferred by the State. We are in full agreement with the reasonings given by the learned Special Judge and findings recorded while acquitting the accused are logical and in accordance with the proposition of law and, therefore, as held by the Apex Court in the case of State of Karnataka v/s Hamereddy reported in 1981 SC 1418, it is not necessary to give detailed reasons. Hence, appeal requires to be dismissed and order of acquittal requires to be confirmed.

10. For the aforesaid reasons, appeal is hereby dismissed. Impugned judgment dated 21.5.1988 passed by the learned Spl.Judge, Panchmahals at Godhara in Spl.Case No. 6 of 1986 acquitting the accused- respondents is hereby confirmed. Bail bonds of the respondents accused, if any, stand discharged.

09.01.2001 [C.K. BUCH, J]

[H. H. MEHTA,J]

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